



January 15, 2008

SENATE BILL No. 105

DIGEST OF SB 105 (Updated January 11, 2008 2:55 pm - DI kc)

Citations Affected: IC 4-21.5; IC 31-9; IC 31-16; IC 31-25; noncode.

Synopsis: Paternity and child support. Requires the department of child services (department) to: (1) implement a pilot program for establishing and enforcing paternity and child support; and (2) select counties to participate in the program. Requires the department to: (1) employ administrative law judges (ALJ); (2) serve notice of financial responsibility to an obligee and obligor concerning a child support obligation; (3) schedule a negotiation conference between the parties not more than 30 days after the department issues the notice; and (4) reschedule a negotiation conference. Requires an obligor and obligee to appear for or reschedule the negotiation conference. Requires the department to issue: (1) an order of child support if the parties stipulate to an agreement; (2) an order for genetic testing if the parties do not agree and the obligor contests paternity; (3) a temporary order of child support and request for an administrative hearing if the parties do not agree and there is an executed paternity affidavit or the results of a genetic test indicate at least a 99% probability that a man is the child's biological father; (4) a default order of child support if the obligor fails to appear for or reschedule a negotiation conference and there is an executed paternity affidavit or the results of a genetic test indicate at least a 99% probability that a man is the child's biological father; and (5) a default order of paternity and child support if the obligor fails to meet certain requirements. Allows: (1) the department to dismiss an action if the results of a genetic test do not indicate at least a 99%
(Continued next page)

Effective: Upon passage; January 1, 2009.

Steele

January 8, 2008, read first time and referred to Committee on Rules and Legislative Procedure.

January 14, 2008, amended; reassigned to Committee on Corrections, Criminal and Civil Matters.

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probability that a man is the child's biological father; and (2) the department, an obligor, or an obligee to request an administrative hearing if the department issues a default order. Requires an ALJ to: (1) determine the matter of paternity and child support de novo; and (2) include written findings and conclusions in the ALJ's order. Requires the department and an ALJ to determine a child support obligation by applying the child support guidelines. Allows: (1) an obligor or obligee to file a written request with the department for the review and adjustment of a child support order; and (2) a party to seek judicial review of an ALJ's order. Provides that a nonresident obligee is not required to appear at a negotiation conference or an administrative hearing. Requires: (1) the department to file orders and other documents with the clerk of a court; and (2) the clerk to stamp the date of receipt on a copy of an order and assign a cause number. Provides that: (1) an ALJ is subject to the rules adopted by the department; (2) an order filed by the department with the court has all the force, effect, and remedies of an order of the court; and (3) if a genetic test is requested after the execution of a paternity affidavit, the court shall order the test to be paid out of the county general fund or by the party who requested the test. Provides that if the parties stipulate to an agreement of a child support obligation at the negotiation conference, the department shall issue an order of child support and provide for custody and parenting time in the order.

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January 15, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 105

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-2-5, AS AMENDED BY P.L.1-2007,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009]: Sec. 5. This article does not apply to the
4 following agency actions:

5 (1) The issuance of a warrant or jeopardy warrant for the
6 collection of taxes.

7 (2) A determination of probable cause or no probable cause by the
8 civil rights commission.

9 (3) A determination in a factfinding conference of the civil rights
10 commission.

11 (4) A personnel action, except review of a personnel action by the
12 state employees appeals commission under IC 4-15-2 or a
13 personnel action that is not covered by IC 4-15-2 but may be
14 taken only for cause.

15 (5) A resolution, directive, or other action of any agency that
16 relates solely to the internal policy, organization, or procedure of
17 that agency or another agency and is not a licensing or

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enforcement action. Actions to which this exemption applies include the statutory obligations of an agency to approve or ratify an action of another agency.

(6) An agency action related to an offender within the jurisdiction of the department of correction.

(7) A decision of the Indiana economic development corporation, the office of tourism development, the department of environmental management, the tourist information and grant fund review committee (before the repeal of the statute that created the tourist information and grant fund review committee), the Indiana finance authority, the corporation for innovation development, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.

(8) A decision to issue or not issue a complaint, summons, or similar accusation.

(9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.

(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4-18-1(g)(1) or IC 22-4-41.

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke a driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

(17) A determination of status as a member of or participant in an environmental performance based program developed and implemented under IC 13-27-8.

(18) A proceeding to establish paternity or child support by

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1 **the department of child service or an administrative law judge**
 2 **under IC 31-25-5.**

3 SECTION 2. IC 31-9-2-1.5 IS ADDED TO THE INDIANA CODE
 4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 5 JANUARY 1, 2009]: **Sec. 1.5. "Administrative law judge", for**
 6 **purposes of IC 31-25-5, means a person employed by the**
 7 **department of child services under IC 31-25-2-21.**

8 SECTION 3. IC 31-9-2-17.7 IS ADDED TO THE INDIANA CODE
 9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 10 JANUARY 1, 2009]: **Sec. 17.7. "Child support", for purposes of**
 11 **IC 31-25-5, includes child support, child support arrearage, foster**
 12 **care maintenance, medical support, and other reasonable support**
 13 **for a child.**

14 SECTION 4. IC 31-9-2-18 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 18. "Child support**
 16 **guidelines", for purposes of IC 31-14-11-8, and IC 31-16-8-1, and**
 17 **IC 31-25-5, refers to the guidelines adopted by the Indiana supreme**
 18 **court.**

19 SECTION 5. IC 31-9-2-82.5 IS ADDED TO THE INDIANA CODE
 20 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 21 JANUARY 1, 2009]: **Sec. 82.5. "Negotiation conference", for**
 22 **purposes of IC 31-25-5, means a meeting between parties to discuss**
 23 **and determine paternity and a child support obligation of an**
 24 **obligor (as defined in IC 31-25-4-4).**

25 SECTION 6. IC 31-9-2-85, AS AMENDED BY P.L.103-2007,
 26 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JANUARY 1, 2009]: **Sec. 85. (a) "Obligee", for purposes of**
 28 **IC 31-16-15 and IC 31-16-16, means a person who is entitled to receive**
 29 **a payment under a support order.**

30 (b) "Obligee" or "petitioner", for purposes of the Uniform Interstate
 31 Family Support Act under IC 31-18, has the meaning set forth in
 32 IC 31-18-1-14.

33 (c) "Obligee", for purposes of IC 31-25-5, means a person who
 34 **is entitled to:**

35 **(1) receive payment under a support order (as defined in**
 36 **IC 31-9-2-125(a)); or**

37 **(2) seek services from a Title IV-D agency.**

38 SECTION 7. IC 31-9-2-86, AS AMENDED BY P.L.145-2006,
 39 SECTION 203, IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE JANUARY 1, 2009]: **Sec. 86. (a) "Obligor", for purposes**
 41 **of IC 31-16-15 and IC 31-16-16, means an individual who has been**
 42 **ordered by a court to pay child support.**

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(b) "Obligor" or "respondent", for purposes of the Uniform Interstate Family Support Act under IC 31-18, has the meaning set forth in IC 31-18-1-15.

(c) "Obligor", for purposes of IC 31-25-4 **and IC 31-25-5**, has the meaning set forth in IC 31-25-4-4.

SECTION 8. IC 31-16-15-2.5, AS ADDED BY P.L.103-2007, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2.5. (a) If, in a Title IV-D case, an income withholding order has not been issued with a support order under section 0.5 of this chapter **or the department of child services or an administrative law judge issues an order of support under IC 31-25-5**, a Title IV-D agency may:

- (1) issue an income withholding order with the support order; and
- (2) after providing notice under section 3.5 of this chapter, implement the income withholding order unless the court:
 - (A) stays the implementation of the income withholding order under section 0.5(c) of this chapter; and
 - (B) provides a written finding of the stay in the support order.

(b) In a Title IV-D case in which the implementation of an income withholding order was stayed under section 0.5(c) of this chapter, the Title IV-D agency may:

- (1) after providing notice under section 3.5 of this chapter, lift the stay if the obligor's child support and arrearage payments are delinquent; or
 - (2) lift the stay if the obligor requests implementation of the income withholding order.
- (c) In a Title IV-D case, if:
- (1) an income withholding order was stayed under section 0.5(c) of this chapter; and
 - (2) an obligor requests the implementation of the income withholding order;

the Title IV-D agency is not required to give notice under section 3.5 of this chapter before implementing the income withholding order.

(d) An income withholding order issued under subsection (a):

- (1) has the same force and effect; and
- (2) is enforceable in the same manner;

as an income withholding order issued by a court.

(e) The total amount required to be withheld under an income withholding order implemented under this section is the sum of:

- (1) the obligor's current child support obligation; plus
- (2) the amount of arrearage payment ordered by the court; plus
- (3) an additional amount as determined under subsection (f) for:

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- 1 (A) any arrearage that has not been adjudicated, if no arrearage
 2 has been adjudicated previously; or
 3 (B) any additional arrearage that:
 4 (i) has not been adjudicated; and
 5 (ii) accrues since the last adjudication of arrearage by the
 6 court.

7 (f) If an obligor subject to an income withholding order is in arrears,
 8 unless otherwise ordered by a court, the Title IV-D agency or its agent
 9 may increase the weekly amount withheld as follows:

- 10 (1) If the arrearages are at least five hundred dollars (\$500) and
 11 less than three thousand dollars (\$3,000), an additional amount of
 12 up to twenty dollars (\$20).
 13 (2) If the arrearages are at least three thousand dollars (\$3,000)
 14 and less than five thousand dollars (\$5,000), an additional amount
 15 of up to twenty-five dollars (\$25).
 16 (3) If the arrearages are at least five thousand dollars (\$5,000) and
 17 less than ten thousand dollars (\$10,000), an additional amount of
 18 up to thirty dollars (\$30).
 19 (4) If the arrearages are at least ten thousand dollars (\$10,000)
 20 and less than fifteen thousand dollars (\$15,000), an additional
 21 amount of up to thirty-five dollars (\$35).
 22 (5) If the arrearages are at least fifteen thousand dollars (\$15,000)
 23 and less than twenty thousand dollars (\$20,000), an additional
 24 amount of up to forty dollars (\$40).
 25 (6) If the arrearages are at least twenty thousand dollars (\$20,000)
 26 and less than twenty-five thousand dollars (\$25,000), an
 27 additional amount of up to forty-five dollars (\$45).
 28 (7) If the arrearages are at least twenty-five thousand dollars
 29 (\$25,000), an additional amount of up to fifty dollars (\$50).

30 (g) A court is not bound by and is not required to consider the
 31 additional amounts described in subsection (f) when ordering,
 32 modifying, or enforcing periodic payments of child support.

33 SECTION 9. IC 31-25-2-21 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 35 JANUARY 1, 2009]: **Sec. 21. (a) The department shall employ a
 36 sufficient number of administrative law judges to hear and decide
 37 cases under IC 31-25-5.**

38 **(b) An administrative law judge employed by the department is
 39 subject to rules adopted by the department under IC 4-22-2.
 40 IC 4-21.5 does not apply to a proceeding by an administrative law
 41 judge under IC 31-25-5.**

42 SECTION 10. IC 31-25-4-17, AS AMENDED BY P.L.103-2007,

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SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JANUARY 1, 2009]: Sec. 17. (a) The bureau shall do the following:

(1) Collect support payments when the payments have been
assigned to the state by the application for assistance under Title
IV-A.

(2) Assist in obtaining **or establishing** a support order, including
an order for health insurance coverage under:

(A) IC 27-8-23;

(B) IC 31-14-11-3; or

(C) IC 31-16-6-4;

when there is no existing order and assistance is sought.

(3) Assist mothers of children born out of wedlock in establishing
paternity and obtaining a support order, including an order for
health insurance coverage under IC 27-8-23, when the mother has
applied for assistance.

(4) Implement income withholding in any Title IV-D case:

(A) with an arrearage; and

(B) without an order issued by a court or an administrative
agency.

(5) Enforce intrastate and interstate support orders using high
volume automated enforcement features.

(6) Use a simplified procedure for the review and adjustment of
support orders as set forth in 42 U.S.C. 666(a)(10).

(b) Whenever the bureau collects support payments on behalf of an
individual who is no longer a member of a household that receives
Title IV-A cash payments, the collected support payments (except
collections made through a federal tax refund offset) shall be promptly
distributed in the following order:

(1) Payment to the recipient of the court ordered support
obligation for the month that the support payment is received.

(2) Payment to the recipient of the support payment arrearages
that have accrued during any period when the recipient was not a
member of a household receiving Title IV-A assistance.

(3) Payment to the state in an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the
recipient's family; or

(B) the amount assigned to the state by the recipient under
IC 12-14-7-1.

(4) Payment of support payment arrearages owed to the recipient.

(5) Payment of any other support payments payable to the
recipient.

(c) Whenever the bureau receives a payment through a federal tax

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refund offset on behalf of an individual who has received or is receiving Title IV-A assistance, the child support payment shall be distributed as follows:

(1) To the state, an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the individual's family; or

(B) the amount assigned to the state by the individual under IC 12-14-7-1.

(2) To the individual, any amounts remaining after the distribution under subdivision (1).

(d) Except as provided in section 19.5 of this chapter, whenever the bureau collects a child support payment from any source on behalf of an individual who has never received Title IV-A assistance, the bureau shall forward all money collected to the individual.

(e) Whenever the bureau receives a child support payment on behalf of an individual who currently receives a Title IV-A cash payment or an individual whose cash payment was recouped, the child support payment shall be distributed as follows:

(1) To the state, an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the individual's family; or

(B) the amount assigned to the state by the individual under IC 12-14-7-1.

(2) To the individual, any amounts remaining after the distribution under subdivision (1).

(f) Unless otherwise required by federal law, not more than seventy-five (75) days after a written request by a recipient, the bureau shall provide an accounting report to the recipient that identifies the bureau's claim to a child support payment or arrearage.

(g) The bureau, the department of child services, and the department of state revenue may not charge a custodial parent a fee to seek or receive a payment through a federal tax refund offset as described in subsection (c).

SECTION 11. IC 31-25-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 5. Establishment of Paternity and Child Support

Sec. 1. (a) The department shall implement this chapter as a pilot program.

(b) This chapter applies only to counties selected as participants in the pilot program by the department.

Sec. 2. (a) The department shall serve a notice of financial

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responsibility to an:

(1) obligee; and

(2) obligor who:

(A) owes child support under an existing child support order;

(B) is responsible for the support of a child; or

(C) is an alleged biological parent.

(b) The notice under subsection (a) must include the following information:

(1) A statement that the obligor is required to appear at the date, time, and location stated in the notice for a negotiation conference to determine the obligor's child support obligation.

(2) A statement that in the absence of an executed paternity affidavit, the obligor may request a genetic test and that if a genetic test is not:

(A) obtained before the legal establishment of paternity; and

(B) submitted into evidence before the entry of the final order establishing paternity;

a genetic test may not be allowed into evidence at a later date.

(3) A statement that the department will issue a default order as described under section 7(a) of this chapter if:

(A) the obligor fails to:

(i) appear for the negotiation conference; or

(ii) reschedule the negotiation conference before the date stated in the notice; and

(B) one (1) or both of the following apply:

(i) The obligor executed a paternity affidavit.

(ii) The results of the genetic test indicate at least a ninety-nine percent (99%) probability that the man is the child's biological father.

(4) A statement that the department shall issue a default order as described under section 7(b) of this chapter if:

(A) the obligor fails to:

(i) appear for the negotiation conference; or

(ii) reschedule a negotiation conference before the date stated in the notice; or

(B) the obligor fails to:

(i) take a genetic test as ordered by the department; or

(ii) appear for an appointment to take a genetic test without good cause.

(5) A statement that a default order will be filed with the clerk

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of the court as described under section 15 of this chapter and that after the default order is filed with the clerk of the court, the default order has all the force, effect, and remedies of an order of the court.

(6) The following:

(A) The name of the obligee.

(B) The name and birth date of the child for whom support is being sought.

(7) A statement that the department will apply the child support guidelines to determine the obligor's weekly child support obligation.

(8) A statement that in calculating the amount of the obligor's weekly child support obligation under the child support guidelines, the department will calculate the weekly child support obligation using the parties' income information and that in the absence of income information, the department may calculate the obligor's weekly child support obligation using the current minimum wage for a forty (40) hour work week.

(9) A statement that the department may issue an administrative subpoena to obtain:

(A) income information; and

(B) other information relevant for establishing and enforcing a child support obligation.

(10) A statement that the department may enter a temporary order requiring the obligor to pay child support in an amount established by applying the child support guidelines.

(11) If applicable, a statement that the amount of arrears that has accrued under an order for child support.

(12) A statement that fees and costs associated with the collection of child support may be assessed against and collected from the obligor.

(13) If applicable, a statement that foster care maintenance may be collected against the obligor.

(14) The interest that may be applied on late child support payments.

(15) A statement that the obligor may assert one (1) or more of the following objections in the negotiation conference, and that if an objection is not resolved, the department will schedule an administrative hearing on the matter:

(A) The obligor is not the parent of the dependent child.

(B) The dependent child has been adopted by a person

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other than the obligor.

(C) The dependent child is emancipated.

(D) There is an existing order of child support that establishes the obligor's weekly child support obligation.

(16) A statement that medical support will be established in accordance with IC 31-16-6-4.

(17) A statement that the department may review and adjust an order for child support in accordance with the:

(A) child support guidelines; and

(B) state laws.

(18) A statement that the obligor is responsible for notifying the department of a change in the obligor's address or employment not later than ten (10) days after the date of the change.

(19) Instructions on contacting the department if the obligor has any questions.

(20) A statement that the obligor has the right to:

(A) consult with an attorney; and

(B) be represented by an attorney at the negotiation conference.

(21) Other information necessary as determined by the department.

(c) The department shall serve a notice of financial responsibility under this section to the obligor and obligee in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

Sec. 3. (a) The department shall schedule a negotiation conference not more than thirty (30) days after the date the department issues the notice of financial responsibility under section 2 of this chapter.

(b) Except as provided in section 14 of this chapter, an obligor or obligee who has been served with a notice of financial responsibility under section 2 of this chapter shall:

(1) appear for the negotiation conference at the date, time, and location set forth in the notice of financial responsibility; or

(2) reschedule the negotiation conference with the department before the date of the negotiation conference as set forth in the notice of financial responsibility.

(c) The department shall reschedule a negotiation conference as established in rules adopted by the department under IC 4-22-2.

(d) If a negotiation conference is rescheduled, the department

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1 shall provide notice to the obligor and obligee of the new date and
 2 time of the negotiation conference in the same manner as
 3 prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

4 Sec. 4. (a) If the parties stipulate to an agreement of a child
 5 support obligation at the negotiation conference, the department
 6 shall issue an order of child support that includes the following:

7 (1) The amount of the obligor's weekly child support
 8 obligation.

9 (2) If applicable, the amount of the obligor's child support
 10 arrearage.

11 (3) Instructions on the manner in which the amount under
 12 subdivision (1) or (2) must be paid.

13 (4) The name, birth date, and residential and mailing address
 14 of the:

15 (A) obligor;

16 (B) obligee; and

17 (C) child for whom support is being sought.

18 (b) If the department issues an order under this section, the
 19 order shall:

20 (1) provide:

21 (A) that the mother shall have sole legal custody of the
 22 child unless the mother and father agree to an alternative
 23 custody arrangement; or

24 (B) if the mother and father agree to an alternative custody
 25 arrangement, the alternative custody arrangement; and

26 (2) establish:

27 (A) parenting time in accordance with the parenting time
 28 guidelines adopted by the Indiana supreme court unless the
 29 mother and father agree to an alternative parenting time
 30 arrangement; or

31 (B) if the mother and father agree to an alternative
 32 parenting time arrangement, the alternative parenting
 33 time arrangement.

34 (c) If the department issues an order under this section, both
 35 parents have the same right to access any records of the child that
 36 a parent may access under the law.

37 (d) The department shall serve an order under this section on
 38 the obligor and obligee in the same manner as prescribed under
 39 Rule 4.1 of the Indiana Rules of Trial Procedure.

40 Sec. 5. (a) If:

41 (1) the parties do not stipulate to an agreement at the
 42 negotiation conference; and

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(2) in the absence of an executed paternity affidavit, the obligor contests paternity; the department shall issue an order for genetic testing of the obligor and continue the negotiation conference to allow for the receipt of the genetic test results.

(b) If the department issues an order for genetic testing under this section, the department:

- (1) shall pay the costs associated with the genetic test; and
- (2) may recover the costs described under subdivision (1) from the:
 - (A) alleged father if paternity is established; or
 - (B) obligee if paternity is not established.

(c) If the:

- (1) department orders genetic testing under subsection (a); and
- (2) results of the genetic test do not indicate at least a ninety-nine percent (99%) probability that the man is the child's biological father;

the department may dismiss the action or take other appropriate action as allowed by law.

(d) The department shall serve the order for genetic testing to the obligor and obligee in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

Sec. 6. (a) The department shall issue a temporary order of child support if:

- (1) the parties do not stipulate to an agreement at the negotiation conference; and
- (2) one (1) or both of the following apply:
 - (A) The obligor has executed a paternity affidavit.
 - (B) The results of the genetic test indicate at least a ninety-nine percent (99%) probability that the man is the child's biological father.

(b) If the department issues a temporary order under subsection (a), the department shall:

- (1) file information with the clerk of the court as required under section 15(b)(2) of this chapter; and
- (2) request an administrative hearing with an administrative law judge.

(c) The department shall serve the temporary order of child support to the obligor and obligee in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

Sec. 7. (a) The department shall issue a default order

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1 establishing child support against the obligor if:

2 (1) an obligor fails to:

3 (A) appear for the negotiation conference at the time and
4 location set forth in the notice of financial responsibility;
5 or

6 (B) reschedule the negotiation conference with the
7 department before the date of the negotiation conference
8 as set forth in the notice of financial responsibility; and

9 (2) one (1) or more of the following apply:

10 (A) The obligor has executed a paternity affidavit.

11 (B) The results of the genetic test indicate at least a
12 ninety-nine percent (99%) probability that the man is the
13 child's biological father.

14 (b) If, in an action to establish paternity and a child support
15 obligation, the:

16 (1) obligor fails to:

17 (A) appear for the negotiation conference at the time and
18 location set forth in the notice of financial responsibility;
19 or

20 (B) reschedule the negotiation conference with the
21 department before the date of the negotiation conference
22 as set forth in the notice of financial responsibility; or

23 (2) obligor fails to:

24 (A) take a genetic test as ordered by the department; or

25 (B) appear for an appointment to take a genetic test
26 without good cause;

27 the department shall issue a default order of paternity and child
28 support.

29 (c) A default order issued under subsection (a) or (b) must
30 include the following:

31 (1) The amount of the obligor's weekly child support
32 obligation.

33 (2) If applicable, the amount of the obligor's child support
34 arrearage.

35 (3) Instructions on the manner in which the amount under
36 subdivision (1) or (2) must be paid.

37 (4) The following:

38 (A) Name of the obligee.

39 (B) Name and birth date of the child for whom support is
40 being sought.

41 (5) For a default order establishing paternity, a statement that
42 the obligor has been determined to be the child's biological

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1 father.

2 (6) Other information necessary as determined by the
3 department.

4 (d) The department shall serve a default order issued under this
5 section to the obligor and obligee in the same manner as prescribed
6 under Rule 4.1 of the Indiana Rules of Trial Procedure.

7 (e) If the department enters a default order under this section,
8 the department, obligor, or obligee may request an administrative
9 hearing on the default order as established in rules adopted by the
10 department under IC 4-22-2.

11 Sec. 8. (a) Upon request by the department, an obligor, or an
12 obligee under section 7(e) of this chapter, the department shall
13 assign an administrative law judge to hold an administrative
14 hearing on the issue of paternity, if applicable, and child support.

15 (b) The department shall send notice of the administrative
16 hearing to the obligor and obligee in the same manner as
17 prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

18 Sec. 9. (a) An administrative law judge may not issue a decision
19 as to the validity of a pre-existing court order. However, the
20 department or an administrative law judge may review and adjust
21 an existing child support order in accordance with:

- 22 (1) the child support guidelines; and
23 (2) state law.

24 (b) An administrative law judge shall determine the matter of
25 paternity, if applicable, and child support de novo.

26 (c) An administrative law judge shall include written findings
27 and conclusions in an order issued by the administrative law judge
28 under this chapter.

29 (d) An order issued by an administrative law judge shall be
30 served upon the obligor and obligee in the same manner as
31 prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

32 Sec. 10. (a) The department or an administrative law judge shall
33 determine the amount of a child support obligation under this
34 chapter by applying the child support guidelines.

35 (b) The department or an administrative law judge may issue an
36 administrative subpoena requesting:

- 37 (1) income information; or
38 (2) other information relevant for establishing and enforcing
39 an order for child support.

40 Sec. 11. (a) If a paternity affidavit is executed under
41 IC 16-37-2-2.1, the:

- 42 (1) mother has sole legal custody of the child; and

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(2) father has reasonable parenting time rights in accordance with the parenting time guidelines adopted by the Indiana supreme court;

unless another custody or parenting time determination is made by a court under IC 31-14.

(b) If a genetic test is requested after the execution of a paternity affidavit, a court shall order that the genetic test be paid:

(1) from the county general fund of the county in which the child support proceeding occurs; or

(2) by the party who requested the genetic test.

(c) The county shall pay an order issued under subsection (b)(1) without an appropriation.

Sec. 12. (a) An obligor or obligee may file a written request with the department for the review and adjustment of:

(1) a court order for child support; or

(2) an order for child support issued under this chapter.

(b) The department, not later than thirty (30) days after receipt of a request for review and adjustment of child support under this section, shall:

(1) if the department objects to the request for review and adjustment of child support based upon the failure to meet the requirements under IC 31-16-8-1 or the child support guidelines, notify the requesting party that the request has been denied and advise the party of the party's right to request an administrative hearing; or

(2) if the department does not object to the party's request, issue a notice of review and adjustment of child support.

(c) If a party requests an administrative hearing under this section, the administrative law judge shall:

(1) hold an administrative hearing not later than ninety (90) days after the administrative law judge receives the request; and

(2) determine only the issue of adjustment of child support.

(d) The department shall serve the obligor and obligee with a notice of review and adjustment of child support in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

(e) A request for review and adjustment of child support shall not stay an order for child support issued by the department under this chapter.

Sec. 13. (a) A party may seek judicial review of an order by an administrative law judge under this chapter not later than fifteen

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1 (15) calendar days after the postmark date on the order issued by
2 the administrative law judge.

3 (b) A party may seek judicial review of an order issued under
4 section 4 of this chapter establishing custody of a child and
5 parenting time.

6 (c) The clerk of the court shall send a notice of the appeal that
7 includes the date and time of the hearing to the:

- 8 (1) appellant;
- 9 (2) appellee;
- 10 (3) department; and
- 11 (4) Title IV-D prosecuting attorney in the county in which the
- 12 appeal was filed.

13 (d) A court shall hear an appeal under this section de novo.

14 Sec. 14. (a) If the department, at the request of another state's
15 child support agency, is acting on behalf of a nonresident obligee,
16 the nonresident obligee is not required to appear at a negotiation
17 conference or an administrative hearing under this chapter.

18 (b) The department may:

- 19 (1) take evidence related to a child support obligation from a
- 20 nonresident obligee by telephone deposition; and
- 21 (2) present the evidence at a negotiation conference or an
- 22 administrative hearing under this chapter.

23 Sec. 15. (a) The department shall file the information described
24 in subsection (b) with the following:

- 25 (1) The clerk of the court in which an action relating to child
- 26 support for a child is pending.
- 27 (2) If there is not an action relating to child support for a child
- 28 pending in a court, the clerk of the court in the county in
- 29 which the notice of financial responsibility under section 2 of
- 30 this chapter was issued.

31 (b) The department shall file the following with a clerk of the
32 court described under subsection (a):

- 33 (1) If the department issues an order of child support under
- 34 section 4 of this chapter, the following:
- 35 (A) A copy of the order.
- 36 (B) Proof of service of the order described under clause
- 37 (A).
- 38 (C) A copy of one (1) of the following:
- 39 (i) An executed paternity affidavit.
- 40 (ii) A genetic test.
- 41 (2) If the department issues a temporary order under section
- 42 6 of this chapter, the following:

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- 1 (A) A copy of the temporary order.
 2 (B) Proof of service of the temporary order.
 3 (3) If the department issues a default order under section 7 of
 4 this chapter, the following:
 5 (A) A copy of the default order.
 6 (B) Proof of service of the:
 7 (i) notice of financial responsibility; and
 8 (ii) default order.
 9 (C) If applicable, a copy of the:
 10 (i) paternity affidavit; or
 11 (ii) result of the genetic test.
 12 (4) If an administrative law judge issues an order establishing
 13 paternity and child support under section 9 of this chapter,
 14 the following:
 15 (A) A copy of the order establishing paternity and child
 16 support.
 17 (B) The:
 18 (i) paternity affidavit; or
 19 (ii) if applicable, genetic test results.
 20 (c) The clerk shall:
 21 (1) stamp the date of receipt of a copy of an order establishing
 22 paternity, if applicable, and child support under this chapter;
 23 and
 24 (2) assign the order described under subdivision (1) with a
 25 cause number.
 26 (d) An order of child support filed under this section has all the
 27 force, effect, and remedies of an order of the court.
 28 Sec. 16. The department shall adopt rules under IC 4-22-2 to
 29 administer this chapter.
 30 SECTION 12. [EFFECTIVE UPON PASSAGE] (a)
 31 Notwithstanding IC 31-25-5, as added by this act, the department
 32 of child services shall adopt rules to administer IC 31-25-5, as
 33 added by this act, before January 1, 2009.
 34 (b) This SECTION expires July 1, 2009.
 35 SECTION 13. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Long be removed as author of Senate Bill 105 and that Senator Steele be substituted therefor.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 105, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections, Criminal and Civil Matters.

(Reference is to SB 105 as introduced.)

LONG, Chairperson

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